No. 02-0427

In the Supreme Court of Texas

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,

Petitioners,

v.

FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF EDUCATION, ET AL.,

Respondents

AMICUS CURIAE BRIEF (WITH APPENDIX)

Submitted by a group of ad valorem taxpayers in support of the Petition for Review

KOLODEY, THOMAS & BLACKWOOD, L.L.P.

Tom Thomas
TX Bar No. 19870000
5910 N. Central Expressway
Suite 700
Dallas, Texas 75206
(214) 953-0000
(214) 953-0006 - FAX

IDENTITY OF PARTIES AND COUNSEL

1. Plaintiffs/Appellants/Petitioners:

West Orange-Cove Consolidated I.S.D., Coppell I.S.D., La Porte I.S.D., and Port Neches-Groves I.S.D.

Counsel:
(Trial and/or Appellate)

George W. Bramblett, Jr.
Nina Cortell
Carrie L. Huff
Charles G. Orr
HAYNES AND BOONE, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3789

W. Wade Porter
HAYNES AND BOONE, L.L.P.
600 Congress Avenue, Suite 1600
Austin, Texas 78701-3236

Mark R. Trachtenberg
HAYNES AND BOONE, L.L.P.
1000 Louisiana, Suite 4300
Houston, Texas 77002-5012

II. Defendants/Appellees/Respondents:

Felipe Alanis in his official capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Strayhorn in her official capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education

Counsel:
(Trial and Appellate)

Greg Abbott, Attorney General for the State of Texas
Andy Taylor, First Assistant Attorney General
Jeffrey Boyd, Deputy Attorney General for Litigation
Toni Hunter, Chief, General Litigation Division
Office of the Attorney General for the State of Texas
Post Office Box12548, Capital Station
Austin, Texas 78711-2548

III. Alvarado Intervenors/Appellees/Respondents:

Alvarado I.S.D., Anthony I.S.D., Aubrey I.S.D., Bangs I.S.D., Bells I.S.D., Community I.S.D., Cooper I.S.D., Covington I.S.D., Detroit I.S.D., Early I.S.D., Fannindel I.S.D., Hutto I.S.D., Karnes I.S.D., Kaufman I.S.D., Kirbyville I.S.D., Krum I.S.D., La Joya I.S.D., Mercedes I.S.D., Meridian I.S.D., New Boston I.S.D., Nocona I.S.D., Olfen I.S.D., Orange Grove I.S.D., Poteet I.S.D., Robinson I.S.D., Rosebud-Lott I.S.D., Rusk I.S.D., Southside I.S.D., Tornillo I.S.D., Trenton I.S.D., Tulia I.S.D., Uvalde I.S.D., Venus I.S.D., Weatherford I.S.D.

Counsel: Randall B. Wood
(Trial and Appellate) Doug W. Ray
RAY, WOOD, FINE & BONILLA, L.L.P.
2700 Bee Caves Road
Austin, Texas 78746

IV. Edgewood Intervenors/Appellees/Respondents:

Edgewood I.S.D., Ysleta I.S.D., Laredo I.S.D., San Elizario I.S.D., Socorro I.S.D., South San Antonio I.S.D., LaVega I.S.D., and Kenedy I.S.D.

Counsel: Albert H. Kauffman (withdrew after Court of
(Trial and Appellate) Appeals decision)
Leticia M. Saucedo
Nina Perales
Joseph P. Berra
Mexican American Legal Defense and
Educational Fund, Inc.
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

V. Amicus Curiae:

David C. Hopson, Robert M. Windham, Albert D. and Mary H. Huddleston, Richard A. and Julie Ford, Vance Miller, Town North Centre, A Texas Joint Venture, Prestonwood Market Square Ltd., A Texas Limited Partnership, Central Forest SC Partners, A Texas Joint Venture, Preston Royal, A Texas Joint Venture, and Highland Park Shopping Village, A Texas Joint Venture

Counsel: Tom Thomas

Kolodey, Thomas & Blackwood, L.L.P.
5910 N. Central Expressway
Suite 700
Dallas, Texas 75206

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INTEREST OF AMICUS CURIAE

This brief is submitted by a group of ad valorem taxpayers (the "Taxpayers") who are, either individually or acting together, plaintiffs in three suits, one each in Dallas, Collin and Upshur Counties. All three suits attack the constitutionality of the school tax as violating three provisions of the Texas Constitution.

The Taxpayers' first argument is that the school taxes are state-wide ad valorem taxes prohibited by Article VIII, § 1-e, because the school districts throughout the state have no meaningful discretion in setting tax rates since the increasing costs of education since *Edgewood IV* have driven taxes upward against the statutory tax rate cap and thus created a state-wide tax. The same state-wide tax argument is advanced by the Petitioners in this case, but on different grounds.

The Taxpayers' second argument is that the taxes are not assessed and collected equally and uniformly throughout the state as required by Article VIII, § 1(a), because ad valorem taxpayers in Texas are *de facto* classified as a single taxable unit, and the school tax rates within the state-wide unit vary somewhat from school district to school district, and thus between taxpayers. The Petitioners do not, and could not, make such an argument because they are not taxpayers.

The Taxpayers' third argument is that the taxes are not collected as part of an efficient system of public free schools as required in Article VII, § 1, of the Constitution because the ad valorem school tax system is taxed to the maximum and more funds are needed for

education than the current taxation and revenue system can yield. Once again, the Petitioners rely upon the same constitutional provision, but for different reasons.

The Taxpayers believe that the public interest will be served by reversing the judgment of the Court of Appeals and remanding to the trial court for further proceedings. Such action will allow the Petitioners to develop their case, and allow the Taxpayers to try their cases without having to distinguish their arguments from those set out in this Petition.

DISCLOSURE OF FEES PAID FOR PREPARING THIS BRIEF

The fees paid, and to be paid, for the preparation and filing of this brief are being paid by one or more of the plaintiff Taxpayers. No fees will be paid by, or accepted from, any person other than such taxpayers.

ARGUMENT AND AUTHORITIES PERTINENT TO THIS BRIEF

Overview

The Taxpayers believe that a brief review of the arguments in their cases could assist this Court in determining that there are several serious constitutional attacks being levied against the school tax, and that a remand of this case for trial is in the public interest.

The Taxpayers' Right to Challenge the School Tax

The right of a taxpayer in Texas to contest the constitutionality of an ad valorem school tax has been confirmed by no lesser authority than the Supreme Court of the United States. In *Phillips Chemical Company v. Dumas I.S.D.*,[1] the plaintiff taxpayer sued to enjoin the school district from collecting ad valorem taxes as violating both the United States and Texas Constitutions. This Court upheld the tax but the United States Supreme Court reversed,[2] whereupon this Court reinstated an injunction against collection of the taxes. The right of a Texas taxpayer to challenge the constitutionality of taxes assessed against him has not, to the Taxpayers' knowledge, been denied since the *Phillips Chemical* case.

A Brief Statement of the Taxpayers' Claim That The School Tax Violates the Constitutional Prohibition Against State-Wide Ad Valorem Taxes – Article VIII, § 1-e, Texas Constitution

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[1] 316 S.W.2d 382 (Tex. 1958).

[2] 361 U.S. 376, 80 S.Ct. 474 (1960).

Ad valorem taxes are the primary source of local revenue in Texas, supplying funds for counties, cities, towns, school districts, junior college districts, hospital districts, Water Code districts, mosquito control districts, fire prevention districts, noxious weed control districts, and many other specially-created taxing units. Ad valorem taxes provide the money for hospitals, roads and streets, municipal and county facilities, court systems, police, water systems, sewage disposal, pest control, fire prevention and fire fighting facilities, and practically every local service. Ad valorem taxes are, and must be by law, strictly local. State-wide ad valorem taxes are constitutionally prohibited by Article VIII, § 1-e, of the Constitution, adopted by the people in 1982, which reads:

> "No State ad valorem taxes shall be levied upon any property within this State."

The history of Article VIII, § 1-e, leaves no doubt that it was specifically intended to protect taxpayers against state-wide ad valorem taxes, *including state-wide school taxes*.[3]

This Court first interpreted Article VIII, § 1-e, in *Edgewood III* in striking down the then existing state-wide school tax, stating in pertinent part (with emphasis supplied), as follows:

> How far the State can go toward encouraging a local taxing authority to levy an ad valorem tax before the tax becomes a state tax is difficult to delineate.
>
> Clearly, if the State merely authorizes a tax but left the decision whether to levy it entirely up to local authorities,...then the tax would not be a state tax....To the other extreme, if the State mandates the levy of a tax at a set rate and prescribes the distribution of the proceeds, the tax is a state tax,

[3] In *Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.* ("*Edgewood III*"), 826 S.W.2d 489 (Tex. 1992), this Court specifically held that a state-wide school tax falls within the prohibition of Article VIII, § 1-e, by stating that: "The history of Article VIII, § 1-e, thus establishes that its framers and ratifiers specifically intended to eliminate the State ad valorem tax as a source of funds for public education." (Emphasis supplied.)

> irrespective of whether the State acts in its own behalf or through an intermediary.
>
> Between these two extremes lies a spectrum of other possibilities.
>
> If the State required local authorities to levy an ad valorem tax but allowed them discretion on setting the rate and disbursing the proceeds, the State's conduct might not violate Article VIII, § 1-e.

Three years later, in *Edgewood IV*,[4] this Court upheld the current school tax, reiterating the definition of a prohibited state-wide ad valorem tax, as used in *Edgewood III*, thus:

> An ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed [school district] is without meaningful discretion.

In both *Edgewood III* and *Edgewood IV*, this Court recognized that the boundary between an acceptable "state-encouraged local tax" and a prohibited "state-wide tax" was difficult to delineate. This Court temporarily upheld the tax in *Edgewood IV* as being properly positioned within the acceptable "spectrum of possibilities" because, at that time, school districts still retained "meaningful discretion" in setting tax rates. This Court also took the opportunity to publish a clear warning that the constitutionality of the tax would deteriorate in the immediate future:[5]

> However, if the cost of providing for a general diffusion of knowledge continues to rise, ***as it surely will***, the minimum rate at which a district must tax will also rise. (Emphasis supplied.)
>
> Eventually, *some* districts may be forced to tax at the maximum allowable rate just to provide a general diffusion of knowledge. If a cap on tax rates were to become in effect a floor as well as a ceiling, the conclusion that the Legislature

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[4] *Edgewood I.S.D. v. Meno*, 917 S.W.2d 717 (Tex. 1995).

[5] In *Edgewood IV*, this Court found that two of the three prongs of a prohibited state-wide tax – levying the tax and disbursing the proceeds – were controlled by the State, not the school districts.

> had set a state-wide ad valorem tax would appear to be unavoidable because the districts would then have lost all meaningful discretion in setting the tax rates.

Although this Court did not precisely define the phrase "meaningful discretion" in the *Edgewood* cases, it is apparent that it was referring to the discretion exercised by school districts in setting tax rates. The Taxpayers submit that the phrase "meaningful discretion" means discretion that is material, substantial or worthwhile.[6] It is logical to interpret "meaningful" as meaning an exercise of discretion which has substance or effect, as opposed to one which does not. Discretion could never be "meaningful" unless it includes the power to maintain, raise, or lower tax rates by a substantial margin, taking into account all relevant factors to be considered in making the decision.

There are an infinite number of factors which school districts consider in setting tax rates. First and foremost, every one of the 1,052 districts must first comply with the Election Code mandate to tax a minimum of $0.86 per $100 of property value, plus whatever additional amount of tax is necessary to satisfy the constitutional requirement to supply a minimum accredited education. Then, between that minimum plateau and the statutory tax cap lies the range of tax rates within which a school district considers the various factors influencing its discretion. Some of those factors conflict with each other. School administrators will invariably set taxes as high as possible in order to support their budgets and to install supplemental programs. Taxpayers, on the other hand, are generally unwilling

[6] *See* Professor Caroline Hoxby's discussion of "no discretion" in her report, "The Texas System of School Finance, Including the Foundation School Program" (the "Hoxby Report"). *Also see* excerpts from the Oral Deposition of Dr. Caroline Hoxby in reference to this issue.

to pay more than they can afford or more than what they perceive to be their fair share. Some taxpayers have limited incomes; many live on pensions; many are businesses which must absorb the taxes as a business expense; some are wealthy; some are not; some have children in school; some do not; some do not even have children. The same taxpayers who are paying school taxes are also paying other local ad valorem taxes, such as hospital taxes, county taxes, etc. Many of the other overlapping ad valorem taxing units are also facing rising costs and increasing budgets, and their tax rates are also escalating. Thus, taxpayers are not only burdened with the payment of school taxes, but also the payment of taxes for roads and sewers, pay raises for policemen and firemen, funds for new courthouses, and money for other local governmental functions as well. Taxpayers' reactions to tax rate changes must be taken into account in the exercise of meaningful discretion. There are limits past which taxpayers will revolt in one form or the other, either by voting down municipal bonds, voting out school board members, or reacting in some other appropriate fashion.

The point when the school tax becomes a prohibited state-wide tax is the point when the rising costs of education, as driven by Chapters 41 and 42 of the Education Code, escalate tax rates to a level where some school districts can no longer consider, and take into account, other relevant factors in setting those rates. That point may coincide with the statutory tax cap, or it may occur at a lesser rate than the cap.

Dr. Caroline Hoxby, Professor of Economics at Harvard University and one of the preeminent authorities in school finance in the United States,[7] has agreed to serve as an expert witness on behalf of the Taxpayers. In her report, Dr. Hoxby points out that the

[7] *See* Caroline M. Hoxby Curriculum Vitae.

Education Code requires Texas school districts to tax at a minimum level to supply at least 58% of the cost of the basic educational program throughout Texas. This requirement, according to Dr. Hoxby, removes from all school districts all discretion to lower taxes below that point, thus removing all meaningful discretion at that level. Applying the *Edgewood* definition of a state-wide tax, she then concludes that the minimum level of taxes dictated by the Education Code is a prohibited state-wide tax, and that the inquiry as to the constitutionality of the school tax only applies to that portion of the tax which exceeds the minimum set by the State.[8] In considering the issue of meaningful discretion as to the balance of the tax under the cap, Dr. Hoxby has extensively analyzed the Texas school finance system and the data reflecting the performance of that system since 1990. As a result of her in-depth analysis, she has concluded that the tax has increased since 1995 to the point where it is essentially a mandatory tax so that most school districts lack meaningful discretion in setting tax rates.[9]

[8] Hoxby Report, pp. 4-8.

[9] Hoxby Report, pp. 7-11.

The Commissioner's own records and reports disclose that, state-wide, most school districts have lost meaningful discretion because, for all practical purposes, the system is already taxing at the maximum level. As depicted in the statistical tables included in the Appendix, for the school year 2001-2002, the tax was already being applied against 97.73028% of its maximum potential,[10] which means there is only 2.26972% taxable property left to be taxed state-wide throughout the entire 1,052 districts.[11] Since all school districts will never tax all property at the maximum rate at exactly the same time, the system will never tax 100% of taxable wealth. The effective maximum taxability is therefore considerably less than 100%. This means that there is even less than 2% taxability remaining in the system, and that the remaining taxability is so fragmented that it, too, is also untaxable for all practical purposes. This is illustrated by the chart depicting untaxed potential revenue included in the Appendix. Within the 2.26972% of untaxed potential revenue, 662 (81%) school districts can only raise an average of $14.07 per weighted student by raising taxes to the cap rate. This hypothetical possibility is neither a practical, nor an economical, reality. Thus, 81% of the remaining 2.26972% of potential untaxed revenue is incapable of being fed into the system.[12] *Bottom line, at least 99 ½ % of the taxes which can be raised, state-wide, by the school tax, are already being raised or are unachievable*.[13] That means there is no

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[10] *See* chart entitled "Untaxed Wealth in Texas School Districts, 2001-2002 School Year."

[11] *See* chart entitled "Untaxed Wealth in Texas School Districts, 1994-95 School Year." The same statistics for 1994-1995 show that the system was only achieving 86.7% of maximum taxation, which means that there was 13.35538% of taxable value yet remaining.

[12] *See* charts entitled "Untaxed Potential Revenue Per Weighted Student in Texas, 1994-95 School Year" and "Untaxed Potential Revenue Per Weighted Student in Texas, 2001-02 School Year."

[13] In school year 1994-1995, approximately 85% of the school districts still had discretion to raise taxes to generate between $159.09 and $582.09 per weighted student. This is in stark contrast to the situation as it existed in

money left. The well has run dry. If the system has no realistic ability to raise any more tax money from ad valorem taxes, then there is obviously no significant degree of meaningful discretion left in the system.

A Brief Statement of the Taxpayers' Claim That the School Taxes Are Not Equal and Uniform – Article VIII, § 1(a), Texas Constitution

Article VIII, § 1(a), of the Constitution, known as the "equal and uniform requirement," requires that in Texas:

"Taxation shall be equal and uniform."

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the school year 2001-2002.

This clause has been interpreted many times to require that all persons (i) falling within the same reasonable classification (ii) be taxed alike.[14] This provision applies to all taxes, whether state-wide[15] or within local taxing units.[16] This mandate applies to all forms of taxes, including all species of ad valorem taxes, including the school tax.

This is the first time that the issue of a state-wide classification of ad valorem taxpayers for school tax purposes has been raised in any reported case. The facts are, for the most part, undisputed. Typically, classification issues arise out of a taxpayer's contention that he has been improperly subclassed for differing tax rates. This case is different. Here, the question is whether or not the subclasses have been abrogated in favor of a single, state-wide classification. That classification exists.

The state-wide classification is the result of the Legislature's overwhelming reliance upon ad valorem taxes for school finance. Customarily, ad valorem taxpayers are classified by the geographical boundaries of each taxing authority, within which boundaries the tax is equally and uniformly applied to each taxpayer. For example, county ad valorem taxes are

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[14] *Rylander v. 3 Beall Bros.* 3, 2 S.W.3d 562 (Tex.App.–Austin 1999, writ denied); *Sharp v. Caterpillar, Inc.*, 932 S.W.2d 230 (Tex.App.–Austin 1996, writ denied); *Upjohn Co. v. Rylander*, 38 S.W.3d 600 (Tex.App.–Austin 2000, no writ).

[15] The effective rates within a district may properly vary to account for exemptions or special uniform classifications such as, for example, a tax break for citizens over 65 years of age.

[16] *See Enron Corp. v. Spring Independent School District*, 922 S.W.2d 931 (Tex. 1996) for a general discussion of the constitutional applicability of the equal and uniform provision.

uniform throughout the county. City ad valorem taxes are uniform throughout the city. Hospital district ad valorem taxes are uniform throughout the hospital district. But, school taxes are different. School ad valorem taxpayers are all lumped together in a single class by Chapters 41 and 42 of the Education Code which require all property owners to pay a minimum amount of ad valorem taxes to be administered under State guidelines enforced by state-imposed sanctions against noncomplying school districts. There is no other state-wide taxing scheme among the dozens of different types of ad valorem units authorized and operating throughout the State. There are, for example, no state-wide hospital taxes or state-wide mosquito control taxes. Ad valorem taxes are local. Counties raise money for local county roads. Hospital districts raise funds for local hospitals. The school tax stands alone in its state-wide application among all ad valorem taxes.

One indicia of classification is that of the earmarking of specific taxes for specific purposes. School ad valorem taxes are earmarked for state-wide funding of public education. This particular characteristic is described in the Interpretive Comment to Article VIII, § 1, of the Constitution, which reads as follows:

> "A special characteristic of the Texas tax system is the earmarking of receipts to specific functions. The underlying purpose of such earmarking is the desire to guarantee *to a state function or service* a certain basic amount of revenue...."

There are a plethora of state-wide taxes, all of which are earmarked for specific purposes or to be placed within specific funds. School taxes fall into this category. All taxable property in Texas is subject to school taxes. Funds are spent at the direction of the State, in compliance with State guidelines. School districts no longer have meaningful discretion as to tax rates. If they refuse to tax and raise enough money to meet state-wide standards, then the

State has the power to take over the district and set the rate. All of these factors are characteristics of a state-wide, not a local, classification of taxpayers.

Several of this Court's comments in *Edgewood IV* describe a state-wide classification of taxpayers, even though that was not the issue in that case. Those comments are as follows:

> For every cent of additional tax effort beyond the $0.86 required for Tier 1, *the State* guarantees a yield of $20.55 per weighted student. To the extent that an additional cent of tax effort fails to yield that amount from the district's own tax base, *the State* makes up the difference. (Page 728)
>
> * * * * *
>
> If a district fails to successfully exercise one or more of the five options by a certain deadline, *the Commissioner of Education* must detach property from the district and annex it to another district. If the detachment will not sufficiently reduce the district's taxable property, the Commissioner must consolidate the district with one or more other districts. (Page 730)
>
> * * * * *
>
> The cap [referring to the $280,000-per-student cap on a district's taxable property] allows the *State* to tap the reservoirs of taxable property situated in property-rich districts. (Page 734)
>
> * * * * *
>
> The $280,000 cap enforces the approach this language [a quote from *Edgewood II*] suggests; with the cap in place, the resources in the wealthiest districts are burdened to substantially the same extent *as are the remainder of the State's resources*. (Page 735)
>
> * * * * *
>
> ...The school districts do not have the right to spend tax revenue derived from property in excess of the $280,000 cap. Under Senate Bill 7, the Legislature has effectively withdrawn the school district's right to tax property values in excess of the cap. (Page 739)
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> * * * * *

Senate Bill 7, like Senate Bill 351, applies generally to the entire State. (Page 746)

* * * * *

[From Judge Enoch's concurrence and dissent] Thus, in all districts, the local district must generate and spend its local tax dollars first to fund the basic program of education that the State is required to provide by statute and Article VII, § 1, of the Constitution. (Page 754)

* * * * *

[From Judge Enoch's concurrence and dissent] In other words, the mechanism adopted by the State to discharge its constitutional obligation to establish an efficient system of education is one that is wholly dependent upon local property tax wealth and tax revenues. (Page 755)

* * * * *

[From Judge Enoch's concurrence and dissent] And as conceded by the State, the entire financing system devised under Senate Bill 7 to achieve a constitutionally efficient education system is to force all districts to tax at the maximum rate of $1.50....There can be no question that the tax is mandatory and that local districts have no meaningful discretion in deciding whether to levy the tax or at what rate to tax. (Page 756)

Perhaps the most compelling factor in concluding that there is a state-wide classification of school tax ad valorem taxpayers is that approximately 99 ½ % of the State's taxable wealth is being effectively taxed for school purposes. Given that there are 1,052 school districts scattered throughout the State, the total exhaustion of taxation throughout those school districts could obviously not be achieved except through the actions of central, unified, driving force. That driving force is the *de facto* classification of all ad valorem taxpayers in Texas as a single unit for school tax purposes.

A Brief Statement of the Taxpayers' Claim That the School Taxes Are Not Assessed and Collected Under A System of Efficient Financing – Article VII, § 1, Texas Constitution

The Texas Constitution places only one specific, affirmative obligation upon the Legislature, and that is to provide for public education as set out in Article VII, § 1, as follows:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an *efficient* system of public free schools.

Many years ago, Texas' relatively uniform demographics allowed for a simplistic, efficient system of taxation and revenue distribution within its school system; but over the years, the asymmetrical economic and demographic development of the State has changed the formula. Needs vary from region to region. Taxable wealth is unevenly distributed. Average income within the districts is widely varied. Taxpayers are beset upon by a barrage of local and state-wide taxes. The demand for local funds is escalating. Tax rates are applied against to homes at the same rates regardless of value, thus taking a bigger proportionate bite out of the lower income taxpayers. However, the constitutional mandate remains intact -- the State is still responsible for providing an efficient system of public free schools, not the school districts and not the local taxpayers.

The concept of an "efficient system" has been explored, although somewhat inconsistently, in the *Edgewood* cases. In 1989, in *Edgewood I*,[17] this Court defined "efficient" as follows:

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[17] *Edgewood I.S.D. v. Kirby*, 777 S.W.2d 391 (Tex. 1989).

> There is no reason to think that 'efficient' meant anything different in 1875 from what it now means. 'Efficient' conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time.

In striking down the then-existing statutory scheme, this Court recognized that the constitutional requirement of an efficient system includes a requirement of financial efficiency as well as the obvious need for administrative adequacy:

> We hold that the State's school financing system is neither financially efficient nor efficient in the sense of providing for a 'general diffusion of knowledge' state-wide, and therefore it violates Article VII, § 1, of the Texas Constitution.

Two years later in *Edgewood II*,[18] this Court went even further in considering financial efficiency, holding that the concept includes efficient taxation, thus:

> "...to be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially similar rate." [More about that later.]

After *Edgewood II*, the Legislature created an efficient system of school finance by taxing property uniformly throughout the State through the use of special taxing districts; however, that scheme was struck down in *Edgewood III* as being a "state-wide tax" in violation of Article VIII, § 1-e. The Legislature then devised another plan which, in 1995 in *Edgewood IV*, this Court found to be financially efficient based upon a comparison of yields-per-cent-of-tax-effort as produced by the two-tier financing scheme built into Chapters 41 and 42 of the Education Code. The analysis of financial efficiency in *Edgewood IV* was an analysis of the efficiency of administration, not an analysis of the efficiency of taxation as an integral part of the overall scheme of school finance.

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[18] *Edgewood I.S.D. v. Kirby*, 804 S.W.2d 491 (Tex. 1991).

Chapters 41 and 42 of the Education Code effectively impose a state-wide program of ad valorem school taxation and a system of redistribution of those tax proceeds. For purposes of an analysis of the efficiency of the tax aspects of the system, the state-wide nature of the tax is not the same as the test applied to determine if there is a constitutionally-prohibited state-wide ad valorem tax. Rather, for purposes of testing the efficiency of the tax, it is sufficient that the tax operates state-wide in some fashion and that it is substantial in effect. The school tax meets both tests. Chapter 41 requires a minimum tax of at least $0.86 per $100 of property value of all property in the state. The substantial effect of the tax is apparent from the charts included in the Appendix.

None of the *Edgewood* cases considered the overall efficiency of the school finance system as judged by the efficiency of the primary source of school revenue -- ad valorem taxes.

Dr. Hoxby reasons that the Texas school tax is the least efficient tax that can be utilized for a scheme of taxation that redistributes revenue among districts, citing as support the experience of other states that have attempted to do so. Her reasoning is amply supported by evidence which she has assembled and the principles of economics which she has applied, all as set out in her report.[19]

As described above and in the charts referenced above, the system is already taxing at least 99 ½ % of what it can expect to achieve, and is therefore basically maxed out. This was not the case in 1994-1995 when *Edgewood IV* was decided, but it is the case today. The ad

[19] *See* Hoxby Report.

valorem tax system is finished as the primary source of meeting the increased costs of public education in Texas.

Axiomatically, since the system's primary funding mechanism is no longer capable of providing funds for rising costs, then the system cannot pay for itself and has become financially inefficient by any standard. The system has also become socially inefficient in that the divisiveness among the State's population created by the "Robin Hood" provisions of Chapter 42 has significantly eroded the educational benefits that Chapter 42 was intended to provide. As the number of "paying" districts has increased, state-wide resentment against Chapter 42 has also increased by the population of each additional paying district. The effect, which once again exists in Texas, is exactly the same as the situation described in the Interpretive Comment to Article VII, § 1, of the Constitution as having existed shortly after the school laws of 1871 were enacted:

> A State Board of Education was set up empowered to act in place of the Legislature in school affairs. A one percent tax upon all property was levied to support the school system; this aroused violent antagonism from a large group of Texans who felt that it was illegal confiscation to compel one man to pay for the education of the children of another.

That same feeling, to a significant degree, still exists, particularly when paying districts must sacrifice long-standing supplemental programs so that receiving districts can have supplemental programs of their own. To some extent, this hostility is a product of the extraordinary diversity in Texas. To some extent, it is simply human nature. For whatever reasons, the social inefficiency, coupled with the exhaustion of ad valorem taxes as a revenue source, compels the abolition of the ad valorem school tax as both a financially and a socially inefficient tax.

CONCLUSION AND PRAYER

WHEREFORE, the Taxpayers pray that the Petition for Review be granted, and that this case be remanded for trial, all as requested by the Petitioners.

Respectfully submitted,

KOLODEY, THOMAS &
BLACKWOOD, L.L.P.
5910 N. Central Expressway - Suite 700
Dallas, Texas 75206
(214) 953-0000
(214) 953-0006 - FAX

By: _____

Tom Thomas
TX Bar No. 19870000

ATTORNEYS FOR TAXPAYERS

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of _____, 2003, true and correct copies of the foregoing instrument were served as follows:

Greg Abbott, Attorney General for the State of Texas — ***Via Certified Mail***
Andy Taylor, First Assistant Attorney General
Jeffrey Boyd, Deputy Attorney General for Litigation
Toni Hunter, Chief, General Litigation Division
Office of the Attorney General for the State of Texas
Post Office Box12548, Capital Station
Austin, Texas 78711-2548

George W. Bramblett, Jr. — ***Via Certified Mail***
Nina Cortell
Carrie L. Huff
Charles G. Orr
HAYNES AND BOONE, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3789

Mark R. Trachtenberg — ***Via Certified Mail***
HAYNES AND BOONE, L.L.P.
1000 Louisiana, Suite 4300
Houston, Texas 77002-5012

Randall B. Wood — ***Via Certified Mail***
Doug W. Ray
RAY, WOOD, FINE & BONILLA, L.L.P.
2700 Bee Caves Road
Austin, Texas 78746

Leticia M. Saucedo — ***Via Certified Mail***
Nina Perales
Joseph P. Berra
Mexican American Legal Defense and
Educational Fund, Inc.
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

_____
Tom Thomas